

Comment to Petition to Amend Rule 41, Rules of Procedure for Juvenile Court

The Petition to Amend Rule 41 of the Rules of Procedure for the Juvenile Court would require the presence of children who are the subject of a dependency proceeding at all hearings except for good cause shown, and would require that the court make a determination that the child's counsel had meaningful contact with the child before each substantive hearing. The proposed rule change reads as follows:

Rule 41 (A). At every substantive dependency hearing, such as the Preliminary Protective Hearing, the Report and Review Hearing and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon motion of the child, the court may enter a written order excusing a child from each hearing, for good cause shown. The court shall determine whether counsel for the child had meaningful contact with the client prior to each substantive hearing.

The following comment to the above proposed rule change was prepared by Jennifer Jordan, Director of Indigent Juvenile Defense for the Office of the Yavapai County Public Defender, and with the assistance of the following named Northern Arizona Juvenile Defense Attorneys; Bruce Griffin, Daniella Ferrari, Elaine Newlin, Ingrid Blasik, Laura Taylor, Lynn Harris, Paul Schlegal and Tanya Imming.

Comment

- I.** Proposed amendment requiring that child must attend all substantive court hearings absent court order excusing attendance.

Pro:

- Children will have increased attendance and participation at court hearings.
- The court will have greater opportunity to observe and interact with the child.

Con:

Attendance at court hearings may not be in the child's best interest where;

- The child is too young to understand that she is attending court and the nature of the proceeding.
- The child is a victim in the dependency and may be traumatized if in the presence of the abusive parent or guardian.
- The child finds it emotionally disturbing to attend the dependency proceedings.
- Court hearings are held during school hours and the child does not want to be absent from class.

II. Court determination whether child's attorney has had meaningful contact with the child prior to each substantive hearing.

Pro:

- Amendment requires periodic contact between child and counsel.
- Increases opportunity for child and counsel to have verbal communication (when child is old enough to talk and is able to express her concerns).

Con:

- Regardless of age, children are frequently unable or unwilling to express their concerns or issues. Under such circumstances the child's attorney must consult with the child's therapist, teachers, CASA, or foster parent to identify the child's needs and concerns.
- "Meaningful contact" is a subjective term and the interpretation may vary depending on the judge. Requiring the court to make such a finding may result in the court being overly intrusive in the attorney client relationship.

The petition to amend Rule 41 advances excellent aspirations; to ensure that children's voices are heard in dependency proceeding and that their interests and concerns are effectively represented. The following modified language is offered as a means to accomplish those goals while being sensitive to the child's needs and leaving it to counsel to determine the most effective method of representation.

The child who is the subject of a dependency proceeding has a right to be present at all substantive hearings. The child's attorney shall advise the child of his/her right to be present and shall assist the child in determining whether to attend the hearing. The child's attorney shall have meaningful communication with or about the child prior to each substantive hearing.

Respectfully Submitted,

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